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PETROLEUM SARAWAK BHD v. PETROLIAM NASIONAL BHD (PETRONAS)

HIGH COURT SABAH & SARAWAK, KUCHING
FARIDZ GOHIM ABDULLAH JC
[NO: KCH-24NCC-4-10-2024]
10 JUNE 2025

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Abstract – *The overall interests and justice are the paramount considerations for a judge deciding whether to grant a stay of proceedings for a suit pending the outcome of another suit. If there is no risk of prejudice or injustice to the parties and no special circumstances and compelling reasons arises for an originating summons to be stayed pending the full and final disposal of an action in another court, then a stay application ought to be dismissed. An application for a stay of proceedings requires especially compelling justification in a case qualifying for urgent judicial decision.*

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CIVIL PROCEDURE: *Stay of proceedings – Application for – Application seeking stay of proceedings of originating summons in Kuching pending full and final disposal of action in Kuala Lumpur – Whether there was overlap of issues and facts – Whether there was risk of prejudice and injustice – Whether cases could be argued and decided separately – Whether special circumstances arose*

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The defendant (PETRONAS) filed an application ('encl. 38') seeking a stay of proceedings to prevent this court from proceeding with the hearing of this originating summons ('Kuching OS') filed by the plaintiff (PETROS) against the defendant pending the full and final disposal of the action filed by Shell MDS (Malaysia) Sdn Bhd ('Shell MDS') against PETROS and PETRONAS in the Kuala Lumpur High Court ('KL proceedings'). Shell MDS commenced the KL proceedings against PETROS and PETRONAS by way of an interpleader proceeding to determine who should Shell MDS pay for the gas received, whether to the plaintiff or the defendant, in view of the fact that there were two gas sales agreements (GSA) entered into by Shell MDS namely Petronas-GSA and Petros-GSA. The defendant's ground for a stay of proceedings were (i) there was an overlap of issues and facts; (ii) in the KL proceedings, the Federal and Sarawak State Governments have been joined as parties to ensure all matters in dispute may be 'effectually and completely determined and adjudicated upon'; (iii) there was a risk of prejudice or injustice to the defendant if the Kuching OS proceeded with the hearing of the plaintiff's OS. The defendant submitted that there was a risk of conflicting decisions, duplications of arguments where parties would have to litigate complex constitutional matters in both the KL proceedings and Kuching OS,

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thus leading to a waste of judicial time and effort. The defendant further submitted that a multiplicity of proceedings would result in conflicting decisions and consequently, tantamount to an abuse of the court process. The plaintiff, in opposing the defendant's application for a stay, contended that the contention made by PETRONAS was unfounded, lacked merit and was a *mala fide* tactical manoeuvre to delay the Kuching OS. The plaintiff also contended that not only had the defendant failed to show any special circumstances justifying a stay but had also failed to discharge the burden of showing any injustice or any abuse of process of the court. The issue to be determined was whether, based on the grounds relied on by the defendant, the Kuching OS proceeding ought to be stayed pending the full and final disposal of the KL proceedings.

Held (dismissing encl. 38):

(1) The main issue in the KL proceedings and the Kuching OS was different. In the KL proceedings, Shell MDS filed an interpleader proceeding naming PETRONAS and PETROS as the first and second defendants and requesting the court to determine who Shell should pay the gas to. The application for an interim injunction has been decided by the KL High Court in favour of Shell MDS. An application to convert the KL proceedings into a writ action had been filed. The KL proceedings at the High Court would need to go through the due processes and procedures before the main proceedings could be set down for hearing or trial. These processes would definitely take considerable time to be completed before the KL proceedings is ready to be adjudicated and disposed of by the High Court. The KL proceedings may take a long period of time before it could be finally disposed of by the court. (paras 43-45)

(2a) The Kuching OS was already at the final stage and was ready for hearing, but for the defendant's application for a stay of the said proceedings, the hearing of encl. 1 was adjourned to hear and dispose of the defendant's application for stay of proceedings (encl. 38). Each case would be and should be determined based on its particular facts and issues raised or arising before the court. Therefore, the Kuching OS would be and should be argued based on the facts and issues raised in the said action. (paras 46 & 48)

(2b) In the Kuching OS, although the Federal and State Governments were not named as parties, the Attorney General ('AG') and the State Attorney General ('SAG') were allowed to participate as *amicus curiae* to assist the court on any legal issues that may impact either Government. As legal advisors to their respective Governments, it is their duty and responsibility to inform and advise their respective administrations of any decision or order of this court that may affect them. With the presence and assistance of both *amicus curiae,* the

matters in dispute between the plaintiff and the defendant in this Kuching OS would be effectually and completely determined and adjudicated upon, separately from the KL proceedings. This court did not have to stay the Kuching OS pending the full and final disposal of the KL proceedings, as both cases could be argued and decided separately. There was no risk of prejudice or injustice to the defendant if the Kuching OS proceeded with the hearing of the plaintiff's OS. There was no waste of judicial time and effort as the Kuching OS could be disposed of expeditiously, as all affidavits and submissions have been duly filed as instructed. (paras 49 & 53)

(3) There were no special circumstances and compelling reasons for the Kuching OS to be stayed pending the full and final disposal of the KL proceedings taking into account amongst others, that the Kuching OS was already at the final stage and the legal issues raised in Kuching OS could be fully ventilated and argued comprehensively by the able and experienced counsels with the participation of both the AG and SAG as *amicus curiae*. The Kuching OS should not be stayed as prayed for in encl. 38. (paras 54 & 55)

Case(s) referred to:

AB (Sudan) v. Secretary Of State For The Home Department [2013] EWCA Civ 921 ***(refd)***

Ambank (M) Bhd v. Malaysian Coal & Minerals Corporation Sdn Bhd [2016] CLJU 472; [2016] 1 LNS 472 HC ***(refd)***

AmBank (M) Bhd v. Metal Reclamation (Industries) Sdn Bhd & Ors [2016] 10 CLJ 205 HC ***(refd)***

Equiticorp Holdings Ltd v. United Securities Sdn Bhd [2007] 6 CLJ 268 CA ***(refd)***

Hanson Quarry Products Sdn Bhd & Ors v. Chong Boon Heng & Ors [2023] CLJU 718; [2023] 1 LNS 718 HC ***(refd)***

Jagdis Singh Banta Singh v. Outlet Rank (M) Sdn Bhd [2013] 3 CLJ 47 CA ***(refd)***

Ling Peek Hoe & Anor v. Golden Star & Ors [2020] 9 CLJ 601 CA ***(refd)***

Nautilus Tug & Towage Sdn Bhd v. Dato' Seri Suresh Emmanuel Abishegam & Ors; Dato' Wan Mohamed Yaacob Dato' Wan Sailadin (Third Party) [2025] 6 CLJ 623 HC ***(refd)***

Public Bank Bhd v. Umapagan K Ampikaipakan [2025] CLJU 510 HC ***(refd)***

Shell MDS (Malaysia) Sdn Bhd v. Petroliam Nasional Bhd (Petronas) & Anor [2025] 5 CLJ 267 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, ss. 43, 73

Federal Constitution, art. 121

Rules of Court 2012, O. 34 r. 1(1)(b), O. 92 r. 4

For the plaintiff - Sim Hui Chuang & Lim Lip Sze; M/s Reddi & Co

For the defendant - Alex Ngu Sze Shae; M/s Alex, Jason & Company

For the State Attorney General (amicus curiae) - JC Fong, Mohd Adzrul Adzlan & Khairul Kabir; State Attorney-General's Chambers

For the Federal Attorney General (amicus curiae) – Nur Idayu Amir & Atirah Aiman Rahim; SFCs

Reported by Suhainah Wahiduddin

JUDGMENT

(Enclosure 38 - Stay of Proceeding)

Faridz Gohim Abdullah JC:

[1] The defendant, PETRONAS, is dissatisfied with my decision made on 28 April 2025 dismissing its notice of application (encl. 38) for a stay of the proceeding of this originating summons ("Kuching OS") pending the disposal of the action filed by Shell MDS (Malaysia) Sdn Bhd (Shell MDS) against PETROS and PETRONAS in the KL High Court (KL proceedings).

[2] PETRONAS has filed an appeal to the Court of Appeal in respect of the dismissal of the said encl. 38.

[3] Below are the full grounds for my decision.

[4] Enclosure 38 is an application by the defendant (PETRONAS) seeking a stay of proceedings to prevent this court from proceeding with the hearing of the Kuching OS filed by the plaintiff (PETROS) against the defendant pending the full and final disposal of the KL proceedings.

[5] The KL proceedings is an interpleader application filed by Shell MDS (Malaysia) Sdn Bhd (Shell) against PETROS and PETRONAS. The KL High Court, at the time of the hearing of encl. 38 has not proceeded with the hearing of the interpleader action.

[6] The grounds in support of the defendant's application (encl. 38) are as set out in the affidavit in support of Anuar Ismail, the Head, Integrated Hydrocarbon Management, Malaysia Petroleum Management of the defendant (encl. 40). The defendant also filed the notice of intention to use the affidavits duly filed under encls. 17, 20, 23, and 26.

[7] The plaintiff (PETROS) is opposing the defendant's application for a stay. In opposing the said application, the plaintiff filed their notice of intention to use the affidavits, duly filed in court as encls. 4, 18, 21, 24, and 42 respectively.

[8] Sections 43 and 73 of the Courts of Judicature Act 1964 (CJA), states that the High Court may stay a proceeding pending appeal:

> Section 43. Applications
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> Wherever application may be made either to the High Court or to the Court of Appeal, it shall be made in the first instance to the High Court.
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> Section 73. Appeal not to operate as stay of execution
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> An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from unless the court below or the Court of Appeal so orders and no intermediate act or proceeding shall be invalidated except so far as the Court of Appeal may direct.

[9] In *Ambank (M) Bhd v. Malaysian Coal & Minerals Corporation Sdn Bhd* [2016] CLJU 472; [2016] 1 LNS 472; [2016] MLJU 282 (citing *Equiticorp Holdings Ltd v. United Securities Sdn Bhd* [2007] 6 CLJ 268, it was held:

> [7] As may be seen from the authorities discussed in *Vijayalakshmi Devi v. Dr Mahadevan*, s. 243(1) has nothing whatsoever to do with staying the effects of a winding up order pending an appeal challenging the making of that order. The latter is governed by s. 73 of the Courts of Act 1964. There is also inherent jurisdiction in a High Court to stay the effects of its orders pending appeal. See, *Re Wickham* [1887] 35 Ch D 272; *Fitzholmes v. Waryam* AIR [1923] Lahore 514. Indeed, it is a logical step in the appellate process that if a party has a right of appeal conferred upon it then it has the right to seek and obtain a stay of the order appealed against: The remarks of the Supreme Court in *Sri Hartamas Development Sdn Bhd v. MBF Finance Bhd* certainly lend support for that view. Further, in *Chong Wooi Leong v. Lebbey Sdn Bhd (No. 2)* [1998] 2 CLJ 509, Abu Mansor JCA (later FCJ) considered it to be "trite law that a court which has given judgment certainly has the power to order stay".
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> [8] Now, it is clear from the order made by the learned judge that he granted a stay pending the disposal of the merits appeal. That is not the kind of order a court makes under s. 243(1) of the Act. So, it was obviously uppermost in the mind of the learned judge who is experienced in company law that it was not open for him to act under s. 243(1) and that is probably why he limited the stay until the disposal of the merits appeal.
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> [9] When these matters were raised during argument, learned counsel for the appellant argued that there were no special circumstances warranting the grant of a stay and hence the judge below erred in making the order he did. **Now, it is well settled that the grant or refusal of a stay pending appeal is a matter within the discretion of the court**. The purpose of a stay is to preserve the integrity of an appeal. See, *Jesasu Pty Limited v. Minister for Mineral Resources* [1987] NSWJB 207. If the refusal of a stay would render an appeal academic, that fact may move a court to grant a stay. In the case at hand, although no written reasons were provided by the High Court for its decision, it is clear that a reasonable tribunal seized of the facts set out in the appeal record would have exercised its discretion in the way in which the judge did in this case. Accordingly, no appellate error is detectable in the decision of the High Court.
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> (emphasis added)

[10] The brief background of the Kuching OS is as follows:

(i) the plaintiff in Kuching OS filed an originating summons against the defendant on 15 October 2024, seeking amongst others, a declaration that the defendant's demand dated 14 October 2024 on the Bank Guarantee No. 99120BGR6470582 dated 29 December 2023 ("bank guarantee") issued by Maybank Islamic Berhad and/or any further demand by the defendant on the bank guarantee is unconscionable and/or unlawful, and accordingly null and void;

(ii) the Kuching OS has been set down for hearing on the 16 April 2025 after all affidavits and written submissions were duly filed by both parties. However, this hearing was adjourned pending the disposal of the defendant's notice of application (encl. 38), an application for a stay of the said Kuching OS, which was fixed on 23 April 2025;

(iii) upon application by the Federal Attorney General (AG) and the Sarawak State Attorney General (SAG), this court has allowed for both the AG and SAG to appear as *amicus curiae*, to assist this court with any legal matters raised or arising affecting the Federal and State Government pertaining to the Kuching OS; and

(iv) this court was informed that an interpleader proceeding was initiated by Shell MDS against PETRONAS and PETROS in the KL High Court on 18 November 2024 ("KL proceedings") with Case No: WA-24NCVC-4367-11/2024. A copy of the High Court judgment of YA Arziah Mohamed Apandi JC dated the 6 January 2025, *Shell MDS (Malaysia) Sdn Bhd v. Petroliam Nasional Bhd (Petronas) & Anor* [2025] 5 CLJ 267; [2025] 3 MLRH 289 was referred by counsel for the defendant. The said judgment was in respect to the application by Shell MDS for an interim injunction against PETRONAS and PETROS.

See: *Shell MDS (Malaysia) Sdn Bhd v. Petroliam Nasional Bhd (Petronas) & Anor* [2025] 5 CLJ 267; [2025] 3 MLRH 289, YA Arziah Mohamed Apandi JC, in respect of the KL proceedings:

> [3] It begins with the execution of the Petronas-GSA in July 2020, followed by Petros's designation as the sole gas aggregator in February 2024, and culminating in the signing of the Petros-GSA in August 2024. The competing legislative frameworks are the heart of the dispute. At the Federal level, the Petroleum Development Act 1974 (PDA 1974) grants Petronas exclusive rights over petroleum operations nationwide. At the state level, the Distribution of Gas Ordinance 2016 (DGO 2016) and its 2023 amendment establish Petros as the sole gas aggregator in Sarawak. This section highlights the fundamental tension between federal and state authorities that underlies the dispute.

[11] The counsel for the defendant submits that the KL proceedings involved all relevant stakeholders, including the Federal and State Governments, and is the appropriate and comprehensive forum for the resolution of the disputes between PETROS and PETRONAS. The defendant contends that the KL proceedings should be fully disposed of first. The reasons for this contention are elaborated in the defendant's affidavits and the counsel's written and oral submissions.

[12] According to the defendant, there are multiple proceedings stemming from the dispute between the plaintiff and the defendant over whether the defendant is entitled to call the bank guarantee ("BG"), and such entitlement to call on the BG boils down to the rights of the defendant to the distribution of gas in Sarawak.

[13] There are three originating summonses filed in Kuching, Sarawak as follows

(i) this Kuching OS;

(ii) *Syarikat Sesco Bhd v. The Defendant* (Originating Summons No: KCH-24NCC-5-10-2024 (HC1)); and

(iii) *Plaintiff v. Maybank Islamic Berhad* ("Maybank") and the defendant (PETRONAS intervened and made a second defendant) (Originating Summons No: KCH-24NCvC-48-10/2024 (HC2)) ("Maybank OS").

Note: This Maybank OS has been agreed by the parties to be withdrawn, and all pending interlocutory/appeal also be withdrawn/struck out with liberty to file afresh.

[14] The counsel has referred to several decided cases and legal principles to support their contentions that the Kuching OS shall be stayed pending the full and final disposal of the KL proceedings, and this includes all or any appeals. Counsel has referred to:

(i) Order 92 r. 4 of the Rules of Court 2012 provides that:

> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

(ii) the Court of Appeal in the case of *Ling Peek Hoe & Anor v. Golden Star & Ors* [2020] 9 CLJ 601; [2020] MLJU 1233 held that the stay of proceedings may be granted pursuant to O. 92 r. 4 of the Rules of Court 2012:

> [49] We are not able to find any reported case which has decided an application to stay a suit pending the outcome of the review application file in the Federal Court. We are of the view that the court may only stay a proceeding pending the outcome of a review application in the Federal Court pursuant to the courts inherent power under O. 92 r. 4 RC, so as to prevent injustice and abuse of court process. (see: *AmBank (M) Bhd v. Metal Reclamation (Industries) Sdn Bhd & Ors*). Order 92 rule 4 ROC provides as follows:
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> > For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[15] The defendant also cited *Hanson Quarry Products Sdn Bhd & Ors v. Chong Boon Heng & Ors* [2023] CLJU 718; [2023] 1 LNS 718; [2023] MLJU 890, a case decided by Justice Wong Kian Kheong J:

> [31] There is no previous precedent on how the applicant may persuade the court to exercise its discretion to stay a suit pending the outcome of a specified event. I am inclined to follow the "special circumstances" test which is applicable to applications for stay of execution of orders and judgments pending disposal of appeals as well as stay of proceedings pending disposal of appeals ("stay pending appeal" applications). The adoption of a similar test of "special circumstances" for stay of proceedings pending the outcome of a certain event, will ensure uniformity in the exercise of judicial discretion in respect of stay applications irrespective of whether there is a pending appeal or otherwise. There is no reason why I should adopt a test in this case which is different from "stay pending appeal" applications.

[16] Shell MDS commenced the KL proceedings against PETROS and PETRONAS (the first and second defendant respectively) by way of an interpleader proceeding to determine who should Shell MDS pay for the gas received, whether to the plaintiff or the defendant in view of the fact there are two gas sales agreements (GSA) entered into by Shell MDS namely:

(i) Petronas-GSA; and

(ii) Petros-GSA.

[17] Both this Kuching OS and the KL proceedings relate to PETROS' challenge on PETRONAS' contractual rights under the gas supply agreement (GSA).

[18] Briefly, the crux of the defendant's ground for a stay of proceedings are:

(i) there is an overlap of issues of law and fact;

(ii) in KL proceedings, the Federal and Sarawak State Governments have been joined as parties to ensure all matters in dispute may be 'effectually and completely determined and adjudicated upon; and

(iii) there is a risk of prejudice or injustice to the defendant if the Kuching OS proceeds with the hearing of the plaintiff's OS. The defendant submits that there is a risk of conflicting decisions, duplications of argument where parties have to litigate complex constitutional matters in both KL proceedings and Kuching OS, thus leading to a waste of judicial time and efforts. The defendant further submits, multiplicity of proceedings would result in conflicting decisions and consequently, tantamount to an abuse of the court process.

[19] The counsel for the defendant submits that, based on the decision in the cases cited to this court, the tests available to determine a stay of proceedings are:

(i) there exist special circumstances to justify the stay order; and

(ii) the efficient and fair resolution of the dispute as a whole.

[20] The State AG has also highlighted an alternative test of rare and compelling circumstances as stated in paras. 19, 20, and 21 of the submission as *amicus curiae*.

[21] The plaintiff opposes the defendant's application for a stay of proceedings. The Sarawak State AG is supporting the plaintiff's submission and position that the Kuching OS should not be stayed. The Federal AG, in their brief submission, support the defendant's submission that KL proceedings should be dealt with first until its full and final disposal.

[22] The grounds of opposition were raised by the plaintiff in their affidavits in opposition and the written submissions.

[23] Based on the written submission (encl. 52), the plaintiff contends that PETRONAS' contention is unfounded and lacks merit. It is a *mala fide* tactical manoeuvre to delay this Kuching OS and prevent this Honourable Court from carrying out its judicial duty and authority to hear and decide on this Kuching OS.

[24] The plaintiff further contends that not only has PETRONAS failed to show any special circumstances justifying a stay, but PETRONAS has also failed to discharge the burden of showing any injustice or any abuse of process of the court.

[25] The plaintiff contends that the threshold for staying of proceedings in an action pending proceedings in another action, is very high, quoting the case of *Nautilus Tug & Towage Sdn Bhd v. Dato' Seri Suresh Emmanuel Abishegam & Ors; Dato' Wan Mohamed Yaacob Dato' Wan Sailadin (Third Party)* [2025] 6 CLJ 623.

[26] As decided in the case of *AmBank (M) Bhd v. Metal Reclamation (Industries) Sdn Bhd & Ors* [2016] 10 CLJ 205 where it states that the legal burden to persuade the court to exercise its discretion to stay a suit pending the outcome of a certain event under O. 92 r. 4 of the ROC should be on the applicant for the stay of proceedings. The applicant must also persuade the court that if the action in question is not stayed, there will be an:

(i) injustice; or

(ii) abuse of court process.

[27] The plaintiff referred to a recent case of *Public Bank Bhd v. Umapagan K Ampikaipakan* [2025] CLJU 510, where it states:

> [38] The Court's power to grant a stay of proceedings is derived from its inherent jurisdiction under Order 92 Rule 4 of the Rules of Court 2012. It is a discretion that must be exercised judiciously and in accordance with established legal principles to ensure justice and fairness between parties. The Court will only grant a stay of proceedings if valid grounds are demonstrated by the applicant. The key considerations for the evaluation are as follows:
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> (i) there is the existence of special circumstances that must be exceptional and compelling, such that it would be unjust or inequitable for the case to proceed;
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> (ii) the balance of justice, which requires the Court to weigh whether granting a stay would prejudice the opposing party or cause unnecessary delay, compared to the potential harm to the applicant if the stay is not granted;
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> (iii) the prevention of abuse of process such that if the Court finds that the application is frivolous, vexatious or intended to solely to delay proceedings, the stay will be refused.
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> [See: *Jagdis Singh Banta Singh v. Outlet Rank (M) Sdn Bhd* [2013] 3 CLJ 47; [2013] 3 MLRA 104; *Kosmo Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd* [2003] 4 CLJ 1].

[28] The plaintiff also refutes the defendant's claim that if a stay of this Kuching OS is not granted, there will be a risk of conflicting decisions and injustice. The plaintiff avers that the defendant's contention that the issues to be decided in the KL proceedings will have bearing on the issues to be decided by this court in this Kuching OS is misconceived and unfounded. The plaintiff contends that:

(i) the High Court in Sabah and Sarawak has the judicial power and jurisdiction to decide on the originating summons herein;

(ii) the Kuching OS is at an advanced stage, whereas the KL proceedings are still in its infancy or at a nascent stage, and if it, at all any case, is to have any bearing on the other case, it should be this Kuching OS rather than the other way around; and

(iii) the actual disputes in the KL proceedings and in this Kuching OS are on different agreement and different disputes between different parties.

[29] On the issue of parties to the KL proceedings and the Kuching OS, the plaintiff submits that the Federal Government and Sarawak Government have been allowed and admitted as *amicus curiae* in the Kuching OS. Thus, their presence in the KL proceedings has no added advantage over this Kuching OS.

[30] The plaintiff also submits that the High Court in Sabah and Sarawak is a court of co-ordinate jurisdiction and status as provided under art. 121 of the Federal Constitution and has the judicial power and jurisdiction to decide on the originating summons and the issues raised herein.

[31] Further, the plaintiff submits, there is no reason why the Kuching OS before this Honourable Court should be stayed or deferred to await and abide by the decision in the KL proceedings. The defendant's stay application (encl. 38) is said to be totally without any merits and a blatant attempt to prevent the hearing of this Kuching OS expeditiously.

[32] The plaintiff submits that Kuching OS is in its final stage compared to the KL proceedings. Pursuant to the directions given by this Honourable Court on 19 February 2025, submissions and reply submissions had been filed and exchanged.

[33] The parties are ready to proceed with the open court hearing on 16 April 2025. The only matter dealt with in the KL proceedings so far is an interlocutory application by Shell MDS for an injunction against PETRONAS and PETROS, which was granted by the KL High Court and is now on appeal to the Court of Appeal. Other than that, there are still no further proceedings before the KL High Court in the KL proceedings. Thus, there is no valid reason to delay and defer the Kuching OS to abide by the KL proceedings.

[34] With regards to PETRONAS' allegation of multiple proceedings stemming from the dispute between PETROS and PETRONAS over the right to distribute gas in Sarawak, and that the ultimate decision in the KL proceedings would have a bearing on the issue to be decided in the Kuching OS, the plaintiff submits that the defendant's argument cannot be sustained. The reasons were as stated in the plaintiff's counsel submission, para. 20, where the plaintiff says the main issue in the KL proceedings and the Kuching OS are completely different. There is no evidence that the Kuching OS is similar to the issues in the KL proceedings.

Decision

[35] The affidavits' evidence, the parties' written submissions, and the arguments advanced by all parties, including the *amicus curiae*, have been considered by this court.

[36] The issue to be determined by this court is whether, based on the grounds relied on by the defendant, this Kuching OS proceeding ought to be stayed pending the full and final disposal of the KL proceedings.

[37] In *Ling Peek Hoe & Anor v. Golden Star & Ors* [2020] 9 CLJ 601; [2020] 31 MLJU 1233, the Court of Appeal states at para. [45] The issue of staying proceedings was the subject of detailed consideration by the Court of Appeal in *AB (Sudan) v. Secretary Of State For The Home Department* [2013] EWCA

Civ 921. The court firstly contrasted a stay of proceedings with a stay of enforcement of a judicial decision or order. It emphasised that the stay of proceedings issue involves case management decisions:

> 27. A stay on proceedings may be associated with the grant of interim relief, but it is essentially different. In determining whether proceedings should be stayed, the concerns of the court itself have to be taken into the balance. Decisions as to listing, and decisions as to which cases are to be heard at any particular time are matters for the court itself and no party to a claim can demand that it be heard before or after any other claim. The court will want to deal with claims before it as expeditiously as is consistent with justice. But, on the other hand, it is unlikely to want to waste time and other valuable resources on an exercise that may well be pointless if conducted too soon. *If, therefore, the court is shown that there will be, or there is likely to be, some event in the foreseeable future that may have an impact on the way a claim is decided, it may decide to stay proceedings in the claim until after that event. It may be more inclined to grant a stay if there is agreement between the parties. It may not need to grant a stay if the pattern of work shows that the matter will not come on for trial before the event in question*. The starting point must, however, be that a claimant seeks expeditious determination of his claim and that delay will be ordered only if good reason is shown.
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> (emphasis added)

[38] Based on the ground of application, the main ground of application to stay the Kuching OS proceedings is to give priority to the KL proceedings to proceed first until its full and final disposal, including any appeal up to the Federal Court.

[39] The defendant's reason is that the resolution of issues in dispute between the parties in the KL proceedings will have a direct effect on the determination of the issues before this Honourable Court in the Kuching OS proceedings to which PETRONAS undertakes to abide by the outcome, including the appeal arising from the KL proceedings.

[40] Should this OS proceed despite the foreseeable outcome that the KL proceedings would ultimately determine all of the disputes between both parties herein, the defendant submits that, it would be a waste of time and effort of this Honourable Court by hearing the parties herein first despite the fact that all of the disputes and issues concerning this Kuching OS would ultimately be decided in KL proceedings (which is more inclusive and broader, as to the question of law is who should be paid and the question of law here is narrower, *ie*, whether the defendant is entitled to call on the BG).

[41] As submitted by the plaintiff and the SAG, it is important to stress that, initiation of a suit in a court of law demands that the suit be heard expeditiously and completed without any inhibition midway (see: *Jagdis Singh Banta Singh v. Outlet Rank (M) Sdn Bhd* [2013] 3 CLJ 47).

[42] Order 34 r. 1(1)(b) of the Rules of Court 2012 states as follows:

> Orders and directions for just, expeditious and economical disposal of proceedings (O. 34 r. 1)
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> (1) Notwithstanding anything in these Rules, the Court may, at any time after the commencement of proceedings, of its own motion, direct any party or parties to the proceedings to appear before the Court, in order that the Court may make such order or give such direction as it thinks fit so that:
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> (b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof.

[43] I have considered the submissions on the above issue of expeditious disposal of the Kuching OS. I agree with the submission from the plaintiff and the State AG (*amicus curaie*) that the KL proceedings may take a long period of time before it is finally disposed of by the court. This is given the stage of proceedings, in the KL proceedings and the Kuching OS is different where Kuching OS is already at an advance stage.

[44] The main issue in the KL proceedings and the Kuching OS is different. In KL proceedings, Shell MDS filed an interpleader proceeding naming PETRONAS and PETROS as the first and second defendants and requesting the court to determine who Shell should pay the gas to. The application for an interim injunction has been decided by the KL High Court in favour of Shell MDS. This court was told that an application to convert the KL proceedings into a writ action has been filed.

[45] Based on what was informed to this court, I believe that the KL proceedings at the High Court will need to go through the due processes and procedures before the main proceedings can be set down for hearing or trial. These processes will definitely, in my view, take considerable time to be completed before the KL proceedings is ready to be adjudicated and disposed of by the High Court.

[46] I agree with the plaintiff that the Kuching OS is already at the final stage and is ready for hearing, but for the defendant's application for a stay of the said proceedings, the hearing of encl. 1 was adjourned to hear and dispose of the defendant's application for stay of proceedings (encl. 38).

[47] Every claimant is entitled to expect expeditious judicial adjudication. Great caution is to be exercised where a stay application is founded on the contention that the outcome of another case will significantly influence the outcome of the instant case. A stay application will require especially compelling justification in a case qualifying for urgent judicial decision (see: *AB (Sudan)*'s case).

[48] The defendant argued that KL proceedings is more inclusive with the joining of the Federal and Sarawak State Government, and the issues to be determined are broader as compared to the Kuching OS. I am of the view that each case will be and should be determined based on its particular facts and issues raised or arising before the court. Therefore, Kuching OS will be and should be argued based on the facts and issues raised in the said action.

[49] In the Kuching OS, although the Federal and State Governments are not named as parties, this court has allowed the Attorney General (AG) and the State Attorney General (SAG) to participate as *amicus curiae* to assist the court on any legal issues that may impact either Government. As legal advisors to their respective Governments, it is their duty and responsibility to inform and advise their respective administrations of any decision or order of this court that may affect them.

[50] The overall interests and justice are the paramount considerations for a judge deciding whether or not to grant a stay of proceedings for a suit pending the outcome of another suit. The court may be more inclined to grant a stay if there is agreement between the parties. It may not need to grant a stay if the pattern of work shows that the matter will not come on for trial before the event in question. The starting point must, however, be that a claimant seeks expeditious determination of his claim and that delay will be ordered only if good reason is shown (see: *AB (Sudan)*'s case).

[51] Order 34 r. 1(b) of the Rules of Court 2012 states that the court may give direction as to the future course of the action as appears best adapted to secure the just, expeditious and economical disposal of the proceedings.

[52] This court has considered both the plaintiff's and the defendant's submissions and arguments, and the submission from both the *amicus curiae* pertaining to whether a stay ought to be granted or otherwise.

[53] Based on the test to be applied and the grounds relied upon by both parties, this court is of the view that, with the presence and assistance of both *amicus curiae*, the matters in dispute between the plaintiff and the defendant in this Kuching OS will be effectually and completely determined and adjudicated upon, separately from the KL proceedings. This court does not have to stay the Kuching OS pending the full and final disposal of the KL proceedings, as both cases could be argued and decided separately. There is no risk of prejudice or injustice to the defendant if the Kuching OS proceeds with the hearing of the plaintiff's OS. This court views that there is no waste of judicial time and efforts as the Kuching OS could be disposed of expeditiously, as all affidavits and submissions have been duly filed as instructed.

[54] I also agree that there is no special circumstances and compelling reason for the Kuching OS to be stayed pending the full and final disposal of the KL proceedings taking into account amongst others, that the Kuching OS is already at the final stage and the legal issues raised in Kuching OS could be fully ventilated and argued comprehensively by the able and experience counsels with the participation of both the AG and SAG as *amicus curiae*.

[55] Having considered all the grounds and the submissions of the defendant, the submission of the plaintiff and the *amicus curiae*, I decided that the Kuching OS should not be stayed as prayed in encl. 38.

[56] Given the above, this court dismissed the defendant's application.

[57] Costs to be costs in the cause.